

**CULTURE, TOURISM, EUROPE &  
EXTERNAL RELATIONS COMMITTEE**  
#SPICeBrexitWeekly

Issue 15

20 December

2016

# BREXIT UPDATE

SPICe weekly update

**SCOTTISH GOVERNMENT'S PROPOSALS  
FOR SCOTLAND'S PLACE IN EUROPE**

**THE GERMAN FEDERAL ELECTION  
AND BREXIT**

**BREXIT AND ENVIRONMENTAL  
LAW IN SCOTLAND**

**SPICe**

The Information Centre  
An t-Ionad Fiosrachaidh

Written by Iain McIver, SPICe Research



The Scottish Parliament  
Pàrlamaid na h-Alba

## Contents

<b>Scottish Government’s proposals for Scotland’s place in Europe</b>	<b>1</b>
<b>The December European Council</b>	<b>3</b>
<b>Scottish Parliament Culture, Tourism, Europe and External Relations Committee consideration of Brexit</b>	<b>4</b>
<b>The UK Parliament’s response to the decision to leave the European Union</b>	<b>7</b>
<b>Reflections on the European Council</b>	<b>14</b>
<b>The German Federal election and Brexit</b>	<b>15</b>
<b>Scottish Universities Legal Network on Europe (SULNE) papers on implications on Brexit for environmental law in Scotland</b>	<b>16</b>

### About this paper

This regular paper produced by SPICe sets out developments in the UK’s negotiations to leave the European Union which are expected to formally begin early in 2017.

Ahead of the UK Government’s triggering of Article 50, the updates will provide information on the UK Government’s approach to leaving the EU, along with details of the Scottish Government and the other Devolved Administrations positions. The updates will also provide information on developments within the EU with regard to the UK’s departure. Finally the update will provide information on the key issues likely to be at play during the negotiations and in developing the UK’s future relationship with the European Union.

As was clear during the referendum campaign and since the decision to leave the EU was taken, there is an abundance of information and analysis available, and this SPICe paper will try to cover the key issues by drawing on that information and analysis. This week’s update provides information on the Scottish Government’s proposals for Scotland’s place in Europe, the December European Council meeting and the House of Lords European Union Committee’s week of Brexit related inquiry reports.

**This is the final update on the UK’s departure from the EU for 2016. The next update will be published on Tuesday 10 January 2017.**

## Scottish Government's proposals for Scotland's place in Europe

---

On 20 December, the Scottish Government published its proposals for Scotland's place in Europe. The proposals cover why the European Single Market matters to Scotland and the possibility of the UK as a whole remaining in the Single Market through European Economic Area (EEA) membership. The Government's proposal then looks at the options for a differentiated proposal for Scotland retaining EEA membership whilst remaining part of the UK in the event the UK Government chooses to leave the EEA.

Chapter 3 of Scotland's place in Europe sets out how Scotland could maintain membership of the EEA while the remainder of the UK leaves. According to the Scottish Government:

*"In the event that the UK Government does not pursue the option of retaining membership of the EEA, the Scottish Government is committed to exploring with the UK Government, in the first instance, the mechanisms whereby Scotland can remain within the EEA and the European Single Market even if the rest of the UK chooses to leave. This is essential if we are to ensure Scotland can continue to realise the substantial economic and social benefits from membership of the European Single Market and the "four freedoms" that lie at its core. However, as we set out later, we also consider that the proposal we put forward in this chapter could have benefits, not just for Scotland, but for the UK as a whole and for our European partners."*

In terms of the proposal for Scotland's place in Europe, the Scottish Government states:

*"What we propose in this chapter is an integrated solution for Scotland which ensures continued membership of the European Single Market, and collaboration with EU partners on key aspects of policy and participation in EU programmes such as Horizon 2020. This has been described by some as the "Norway option", but properly encompasses all of the EFTA countries which are also party to the EEA Agreement, including Iceland and Liechtenstein. Beyond the common aspects of these relationships (which relate to the implementation of the European Single Market), Scotland would also seek the opportunity to collaborate in a wider range of policy areas such as energy and justice, which would add to our ability to work with European partners beyond a relationship based solely on free trade. Other differentiated options would also be open to Scotland instead of, or in addition to, the one discussed in this chapter, whereby Scotland could seek to remain part of particular EU policies and initiatives (i.e., Horizon 2020, Erasmus, Europol)."*

Specifically the Scottish Government proposes that:

*"The option we consider here does not require the UK to remain in the EU. In this section of the paper we consider the option of Scotland remaining part of the European Economic Area – in other words, Scotland would continue to participate in the European Single Market and uphold the "four freedoms" as part of its law. It is important to stress that this option does not require concessions either from the UK Government or the governments of the EEA Member States to permit*

*Scotland to join the single market. Rather it requires agreement that Scotland should not be required to leave that market against the clear democratic wishes of a majority of our, and the EU's, citizens."*

Chapter 4 of the Scottish Government's proposal sets out how the Government believes the powers of the Scottish Parliament should be increased following Brexit and as part of that approach, the further devolution of powers the Government believes will be necessary to ensure that Scotland can meet the requirements of the differentiated position it has proposed.

Ahead of publication, the First Minister [writing in the Financial Times](#) (pay wall) on 19 December said:

*"If the UK Government opts not to remain in the single market our position is that Scotland should still be supported to do so – not instead of, but in addition to free trade across the UK – and the paper we will publish will outline how that could be achieved. This would involve the devolution of new powers to Edinburgh. Not remaining in the single market would be deeply economically damaging for Scotland, with independent analysis from the University of Strathclyde's Fraser of Allander Institute suggesting up to 80,000 jobs would be lost over a decade.*

*I am not for one moment underestimating the challenges and potential difficulties involved in implementing the proposals we will bring forward. Effecting such a solution would require political goodwill and an openness to new ways of doing things."*

On 19 December, the Prime Minister in response to a question from Angus Robertson MP addressed the Scottish Government's proposals. She [told the Commons](#):

*"The right hon. Gentleman referred to the document that the Scottish Government will publish tomorrow. I took a call from the First Minister this morning, in which I assured her that we will look very seriously at the proposals that the Scottish Government are bringing forward. I welcome the fact that they have been looking at their priorities. We have been encouraging all the devolved Administrations to do so, so that those priorities can be taken into account in the UK negotiations on leaving the European Union.*

*There is already a structure in place that enables us to discuss those priorities with the devolved Administrations. The Joint Ministerial Committee on EU Negotiations will meet in early January. It has been meeting regularly with my right hon. Friend the Secretary of State for Exiting the European Union. There will be a further session of the JMC plenary in January. That normally meets only once a year, if that, but we are increasing the number of its meetings precisely so that we can engage with the devolved Administrations on these issues."*

## The December European Council

---

The December European Council (the meeting of EU Members Heads of State and Government) took place on 15 December in Brussels. Whilst the meeting of the 28 Member States included no reference to Brexit (see the [Council Conclusions](#)), an informal meeting of the EU 27 (minus the United Kingdom) took place following the end of the European Council. The meeting led to the [following statement](#) being published:

*“We, the Heads of State or Government of 27 Member States, as well as the Presidents of the European Council and the European Commission, determined to see the Union succeed, stand ready to start negotiations with the UK as soon as the UK has notified under article 50. We welcome the intention of the UK to do so before the end of March 2017, so that we can begin to tackle the uncertainties arising from the prospect of the UK's withdrawal.*

*We stand firmly behind our statement of 29 June 2016 in its entirety and will continue to adhere to the principles laid down therein. We reiterate that any agreement will have to be based on a balance of rights and obligations, and that access to the Single Market requires acceptance of all four freedoms.*

*We intend to conduct the withdrawal negotiations in a spirit of trust and unity among us. To this end, we endorse the procedural arrangements set out in annex for these negotiations.”*

Amongst the key outcomes revealed in the annex to the statement is that the European Commission is to be asked to lead the negotiations on behalf of the EU with the Commission's nomination of Michel Barnier as chief negotiator seen as “welcome”. According to the statement:

*“The Council will be invited to nominate the European Commission as the Union negotiator. The Commission's nomination of Michel Barnier as chief negotiator is welcome. To ensure transparency and build trust, the Union negotiator's team will be ready to integrate a representative of the rotating Presidency of the Council. Representatives of the President of the European Council will be present and participate, in a supporting role, in all negotiation sessions, alongside the European Commission representatives. The Union negotiator will systematically report to the European Council, the Council and its preparatory bodies.”*

In relation to the role of the European Parliament in the process, the statement said

*“The Union negotiator will be invited to keep the European Parliament closely and regularly informed throughout the negotiation. The Presidency of the Council will be prepared to inform and exchange views with the European Parliament before and after each meeting of the General Affairs Council. The President of the European Parliament will be invited to be heard at the beginning of meetings of the European Council.”*

On 19 December, the Prime Minister made a [statement to the House of Commons](#) on the European Council meeting. On Brexit, the Prime Minister told the House:

*“I updated the Council on the UK’s plans for leaving the European Union. I explained that two weeks ago this House voted by a considerable majority—almost six to one—to support the Government by delivering the referendum result and invoking article 50 before the end of March. The UK’s Supreme Court is expected to rule next month on whether the Government require parliamentary legislation in order to do this. I am clear that the Government will respect the verdict of our independent judiciary, but I am equally clear that whichever way the judgment goes, we will meet the timetable I have set out.*

*At the Council, I also reaffirmed my commitment to a smooth and orderly exit. In this spirit, I made it clear to the other EU leaders that it remains my objective that we give reassurance early on in the negotiations to EU citizens living in the UK and UK citizens living in EU countries that their right to stay where they have made their homes will be protected by our withdrawal. This is an issue that I would like to agree quickly, but that clearly requires the agreement of the rest of the EU.*

*Finally, I welcomed the subsequent short discussion between the 27 other leaders on their own plans for the UK’s withdrawal. It is right that the other leaders prepare for the negotiations, just as we are making our own preparations. That is in everyone’s best interests.*

*My aim is to cement the UK as a close partner of the EU once we have left. As I have said before, I want the deal we negotiate to reflect the kind of mature, co-operative relationship that close friends and allies enjoy: a deal that will give our companies the maximum freedom to trade with and operate in the European market and allow European businesses to do the same here, and a deal that will deliver the deepest possible co-operation to ensure our national security and the security of our allies, but a deal that will mean that when it comes to decisions about our national interest, such as how we control immigration, we can make these decisions for ourselves, and a deal that will mean our laws are once again made in Britain, not in Brussels. With a calm and measured approach, this Government will honour the will of the British people and secure the right deal that will make a success of Brexit for the UK, for the EU and for the world. I commend this statement to the House.”*

The Prime Minister then took questions from MPs.

## **Scottish Parliament Culture, Tourism, Europe and External Relations Committee consideration of Brexit**

The Scottish Parliament’s Culture, Tourism, Europe and External Relations Committee continued its inquiry into [the implications of the EU referendum for Scotland](#) on 15 December when it took evidence from witnesses on EU nationals and their rights. The Committee [took evidence](#) from Professor Eleanor Spaventa from Durham University; Professor Dimitry Kochenov, Chair in EU Constitutional Law at the University of Groningen; Brendan Donnelly, Director of the Federal Trust and Former MEP; Sunder

Katwala, Director of British Future; and Professor Catherine Barnard, Professor of European Union Law at the University of Cambridge.

Sunder Katwala addressed the issue of EU citizens currently in the UK by referring to the [British Future report](#) on EU nationals living in the UK. He told the Committee:

*“We will have some very complex negotiations. Those have not begun yet, so we do not know the starting positions or the outcomes. However, they will affect everyone in Scotland and in Britain in lots of ways. The most pressing and urgent issue is the 3 million Europeans who now live in the UK—150,000 of them in Scotland—and over a million Brits around the EU.*

*In the case of European nationals living in Scotland and across the UK, having or beginning the negotiations presents no barrier to the UK determining their future status beyond Brexit. The only thing that requires to be negotiated is the protection of the UK nationals around the EU.*

*A decision could be made to link those questions or to separate them, but it is entirely up to the UK Government whether it wants to give European nationals in Britain assurance of their status. That is a political decision and what would have to happen, as the current status of permanent residence is linked to our EU membership, is that we would have to invent a new status that is identical to the current status. It would be a very similar proposition to the overall repeal act. The repeal act will incorporate everything that currently exists in European law into UK law and we will start from there. We would need to invent a version of what is currently permanent residence. We could call it ex-EU status and we should give it all the same rights that EU nationals currently have. The UK Government could do that right now or say that it would do that. The biggest barrier to the provision of such an assurance is a political decision to give those people that commitment.”*

Brendan Donnelly agreed that guaranteeing the status of EU nationals in the UK would be politically advantageous in terms of the negotiations but might present domestic political problems:

*“I mentioned part of the public perception that Mrs May and her ministers want to create, but I would go further. I do not think that what we are debating is at the heart of what our partners are interested in. I agree entirely that a generous gesture towards the 2 million EU nationals would be very welcome and would help our negotiating position, but the fundamental problem at the beginning is that those who are running Brexit in this country believe that we can have a better adjustment of rights and responsibilities than we currently have, and the specific and stated aim of our partners is to give us a worse deal. It seems to me that those two things can be brought together only by something that is rather like where we currently are, which would undermine entirely the proposition that Brexit will bring about something useful. I am not sure how that circle will be squared, and I am not sure that a diplomat could tell members how to do that. A diplomat would certainly look at the important issues that have been raised, but it seems to me that a diplomat in the Foreign and Commonwealth Office has no more idea about how that circle is to be squared than I or—I suspect—members do, with respect.”*

Professor Catherine Barnard set out what EU citizenship means, how it is derived and some history behind the principle of freedom of movement:

*“As far as EU citizenship is concerned, there is quite a lot of misunderstanding about some fairly rudimentary points. The first point is that everyone who holds a nationality of a member state is an EU citizen. Following Brexit, UK nationals will no longer hold the nationality of a member state of the EU and will therefore no longer be EU citizens. Deprivation of citizenship is a serious matter. It is less serious legally than it might otherwise be because, of course, UK nationals will retain the nationality of the UK, so they will not be rendered stateless. Nevertheless, they will be deprived of the rights that we have heard about such as the rights of free movement.*

*As far as those who enjoy the rights of free movement are concerned, in 1957, when the Treaty of Rome was drafted, only those who were economically active had the rights of free movement. Only those who were employed workers, those who were self-employed or those who provided services had those rights. If we scroll forward to the early 1990s, added to that mix were people who were semi economically active—students and persons of independent means, which included the retired. Those two groups had the rights of free movement, provided that they had sufficient resources and medical insurance.*

*In 1992, everyone who held the nationality of a member state became an EU citizen. The question then was about who else fell under the net of the rights of free movement. The group who had been left out of the analysis that I have just given were those who are essentially economically inactive. There was a period when it looked as though the European Court of Justice was going to give quite significant rights to people who are economically inactive—people who are not contributing to the economy of the host state—but, in a major decision a couple of years ago in a case called Dano, the European Court of Justice seemed to have clamped down on that. Basically, it said that, as a minimum, people have to have sufficient resources and health insurance to live in another member state. Therefore, those who are on the margins of society, although they are citizens, probably do not actually have the rights of free movement.*

*On Brexit, those rights for the groups that I have just identified will be removed, unless we join the European Economic Area as an independent state and not qua a member of the European Union. Of course the advantage of joining the European Economic Area is that it is as close as possible to the position that we have at present, but it is worth noting that the European Economic Area does not recognise the concept of EU citizenship. If we were to rejoin the EEA, in which case our position would be much the same as that of Norway or Iceland, there would be rights of free movement for those who are economically active, such as workers, the self-employed and service providers. The so-called assisted rights directive would also apply, so that students and persons of independent means would have rights. However, any rights under the more general principles of citizenship that those who are economically inactive might previously have had would not apply. The EFTA court does not give an expansive reading of citizenship rights for economically active people.”*

Professor Kochenov built on Professor Barnard’s comments and explained why family members of EU nationals should also be entitled to derived rights after Brexit as well:

*“It makes sense to say that the derived rights of family members of EU citizens used to be derived rights of family members of EU workers before 1992—before the creation of citizenship—just to add to what Professor Barnard described. From the very beginning of the EU in the 1950s, the framework of free movement obviously included more vulnerable individuals who were not economically active, as long as they were attached. Their rights were secondary and derived from the rights of EU workers. Those people should definitely be protected in the UK after Brexit as well.”*

Professor Spaventa addressed the situation of what might happen to UK citizens in the EU post Brexit if their rights haven’t been protected in the negotiated agreement:

*“At the moment, UK citizens are protected as EU citizens because they have exercised a right that is granted directly by EU law. For me, it is unthinkable that somebody who has EU citizenship at the time of exit will be treated as a third-country national, because there is quite a complex body of case law. When the person exercised the right, they had that right, and a person who has lost that right should be treated differently under European law from how a Canadian or whatever would be treated.*

*That is particularly true because third-country national family members—the spouse or the children of a worker—keep the right to reside in the host member state in certain circumstances, even including when the main right holder has left. Here is an example. I am Italian and I bring my Canadian husband here. I then decide that I do not like the UK any more—and neither do I like my husband any more—and I go back to Italy. In European law, my husband will keep rights. He will be protected as a special person; he will not be treated as a third-country national.*

*Because of Brexit, rights will change, but it is unthinkable that UK citizens who have exercised their EU rights would be treated worse than my Canadian husband. That is because of a series of constitutional constraints and principles that the European Court of Justice and the European institutions have elaborated on in the past 20 years.”*

## **The UK Parliament’s response to the decision to leave the European Union**

---

The last two weeks before the Christmas recess have been busy in the UK Parliament in relation to Brexit. Included in the summary of events below is the Secretary of State for Exiting the EU’s evidence to the Committee on Exiting the European Union and the House of Lords European Union Committee’s publication of a series of reports on Brexit.

## **David Davis at the Committee on Exiting the European Union**

On 14 December, The House of Commons Committee on Exiting the European Union took evidence from David Davis MP, Secretary of State for the Department on Exiting the European Union, on the UK's negotiating objectives for withdrawal from the EU. The evidence session can be viewed on [Parliament TV](#).

According to [Sky News' report](#) of the evidence session, the Secretary of State did not rule out a transition arrangement when the UK leaves the EU. According to Sky News:

*“Speaking in front of the Commons Select Committee for Exiting the European Union, chaired by former shadow foreign secretary MP Hilary Benn, Mr Davis said the Government's plan for Brexit would not be published before February.*

Answering questions from the cross-party committee for the first time, Mr Davis said he hoped to achieve "maximum" market access for British companies with minimum disruption.

He said he would be keeping open as many negotiating options as possible.

During the meeting, Mr Davis indicated that the Government is working on four possible outcomes from the Brexit talks in relation to the European Customs Union.

These range from being fully or partially inside the Union, to having a free trade agreement and customs arrangement with the remaining EU, to being "completely outside".

According to the [Independent's coverage](#) of the evidence session, the Secretary of State told the Committee that a key outcome of Brexit would be to give Parliament back control of Britain's borders. According to the Independent:

*“Asked if he thought discussion of issues like preferential, skill-based migration for EU citizens would feature in the negotiations, Mr Davis said: “No, I don't.*

*“I think that the operation of that decision after we have left the European Union will be in the national interest and that will affect all levels of skill - the judgment that the Government comes to as to what's necessary for universities, what's necessary for business, and what's necessary for fruit picking.”*

The Brexit Secretary said that taking control of immigration would be a cornerstone of withdrawal as Switzerland believed it had agreed an “emergency break” with the EU, but that did not work in practice due to treaty obligations.”

## **House of Lords European Union Committee – Inquiry reports**

As reported in the previous [update](#), last week, [the House of Lords EU Committee published six reports on Brexit in six days](#). A summary of all six reports is provided below.

The first report on [UK-Irish relations](#) was published on 12 December. According to the Committee's [news release](#) announcing publication:

*“The Committee concluded that any negative impact of Brexit on the UK economy is likely to be replicated, or even magnified, for the Irish economy. The Committee agreed that the unique nature of UK-Irish relations requires a unique solution, and calls on the UK and Irish Governments to negotiate a draft bilateral agreement, incorporating the views and interests of the Northern Ireland Executive, which would then need to be agreed by the EU as part of the final Brexit negotiations, with key aspects including:*

- Continuation of the current open land border between the UK and Ireland
- Maintenance of the Common Travel Area, the right of free movement within it for UK and Irish citizens, and their right to reside and work in both countries.
- Retention of the right to Irish (and therefore EU) citizenship for the people of Northern Ireland.
- A customs and trade arrangement between the UK and Ireland if the UK leaves the customs union.
- Reaffirmation by both Governments of their commitment to the Belfast/Good Friday Agreement and continued support for cross-border cooperation.”

The second report on [options for trade](#) was published on 13 December. The Committee's [news release](#) outlined the key findings from the report. Firstly, the Committee concluded there are 4 post Brexit trading options open to the UK, these are joining the European Economic Area; remaining in a Customs Union with the EU; negotiate a Free Trade Agreement with the EU or trade with the EU under World Trade Organisation rules.

The Committee concluded that a transitional agreement is required between the UK leaving the EU and a new trading agreement being established. According to the Committee:

*“The report recognises that the Government is seeking a bespoke agreement with the EU post Brexit, but concludes that tailoring existing trade models is difficult. It notes that a FTA with the EU would take longer than two years to negotiate.*

It concludes that:

- The Government will need to agree a transitional trade arrangement between the UK leaving the EU and full implementation of new trade terms;
- Temporary extension of participation in the customs union could be one important element of this; and
- The Government should establish a clear ‘game plan’ for a transitional arrangement at the outset of negotiations under Article 50.”

The Chairman of the House of Lords EU External Affairs Sub-Committee, Baroness Verma, said:

*“It is unlikely that a bespoke EU trade agreement can be agreed within Article 50’s two-year period, so a transitional deal is vital for protecting UK trade, and jobs that rely on trade”*

*“The Government should focus on trade with the EU and its World Trade Organisation (WTO) schedules. Deals with non-EU countries are contingent on the outcome of these negotiations, and need to be sequenced accordingly”*

*“The complexity of the issues and the tight timetable require a significant scale-up in capacity in government departments and clear leadership across Whitehall”*

[Lord Whitty](#), Chairman of the EU Internal Affairs Sub-Committee said:

*“While an FTA would provide the greatest flexibility, and no commitment to freedom of movement, there is no evidence that it could provide trade on terms equivalent to membership of the Single Market.”*

On 14 December, the European Union Justice Sub-Committee published its [report on acquired rights](#). The report also published a news release summarising the [key findings](#) in the report. The news release states:

*“There was much talk before the referendum that these rights would somehow be protected as “acquired rights”. This was misleading. If the UK wants to preserve certain EU rights on withdrawal, it will have to ensure they are safeguarded in the withdrawal agreement.*

The majority of the safeguarded rights are likely to be reciprocal with EU rights. The report recommends that a mechanism be established to ensure that UK law can take account of relevant developments in EU law, and, importantly, that EU law can take account of relevant developments in UK law. The report points to a precedent for this type of judicial cooperation.

- If EU citizenship rights are not safeguarded the consequences will be severe: EU nationals in the UK and UK nationals in other EU Member States could lose their right to live and work in their country of choice.
- EU nationals in the UK and UK nationals in other EU Member States are, unsurprisingly, deeply anxious about their futures. The Government should give a unilateral guarantee now that it will safeguard the EU citizenship rights of EU nationals in the UK when the UK withdraws from the EU. The overwhelming weight of the evidence the Sub-Committee received points to this as morally the right thing to do.
- Failing this, there is a strong case for agreeing EU citizenship rights as a preliminary and separate element of the negotiations as soon as Article 50 is triggered.”

The European Union Financial Affairs Sub-Committee published its report on [Brexit and financial services](#) on 15 December. According to the [news release](#):

*“The report highlights the importance of agreeing a transitional period for financial services, so that a 'cliff edge' is avoided, both at the moment of withdrawal following the Article 50 process and as the country moves to a new relationship with the EU. It finds that the third-country equivalence provisions in EU legislation are not a substitute for the passporting arrangements, which UK-based firms can currently use, as they are patchy and vulnerable to political influence. A priority for the Government in the negotiations should be to seek to bolster those provisions, should passporting not be an option. The Committee also concludes that the wider EU economy relies on the financial services currently provided in the UK, which may not be easily replicated elsewhere in the EU, and that, therefore, it would be in the EU's interests to preserve access to its market for UK-based firms.”*

The Committee's Chair, Baroness Falkner of Margravine highlighted the importance of transition arrangements following Brexit when she published the report. She said:

*“The Government has a lot of work to do. First of all, it must, early in the negotiation process, agree a transitional period so as to prevent UK based financial services firms from restructuring or relocating on the basis of a 'worst-case' scenario. Last week, France's leading financial regulator told the BBC that some major banks are in the advanced stages of planning to shift some operations from London to Paris.”*

On 16 December, the European Union Home Affairs Sub-Committee published its inquiry report on [future UK–EU security and police cooperation](#). The report concluded that:

*“Access to EU tools and agencies such as the European Arrest Warrant, Europol, Eurojust, the Schengen Information System (SIS II) and the European Criminal Records Information System or to credible replacements is vital to the ability of UK law enforcement agencies to fight crime and keep the public safe.”*

The Committee's report points out that a number of justice cooperation measures which the UK will now leave as a result of Brexit where initiatives the UK Government chose to opt-in to just two years ago. According to the Committee's [findings](#):

*“Access to EU law enforcement databases and data-sharing platforms is integral to day-to-day policing up and down the country. Were the UK to lose access to them upon leaving the EU, information that can currently be sources in seconds or hours could take days or week to retrieve, delivering an abrupt shock to UK policing and posing a risk to the safety of the public.*

*The data-sharing tools that witnesses identifies as top priorities for the UK - SIS II (the Second Generation Schengen Information System) and ECRIS (the European Criminal Records Information System) - are also those it may be hardest to negotiate access to because they are currently used by Schengen or EU members only.*

*The European Arrest Warrant is a critical component of the UK's law enforcement capabilities. The most promising avenue for the Government to pursue may be to follow the precedent set by Norway and Iceland and seek a bilateral extradition agreement with the EU that mirrors the EAW's provisions as far as possible. An operations gap between the EAW ceasing to apply and a suitable replacement coming into force would pose an unacceptable risk."*

Finally, on 17 December, the European Union Energy and Environment Sub-Committee published its report on [Fisheries after Brexit](#). The Committee report pointed out that Brexit would lead to the UK leaving the Common Fisheries Policy but despite this:

*"fish know nothing of political borders and the majority of commercial fish stocks are shared between the UK and the EU or other European coastal states to some degree. Species of these fish may spend different stages of their life cycles in different nations' Exclusive Economic Zones (EEZs), and their spawning grounds may be in a different region from that in which they are caught when mature. These stocks are vulnerable to exploitation."*

The [press release](#) issued by the Committee summarised the report's key findings:

*"The Committee concluded that in leaving the Common Fisheries Policy the UK will become an independent coastal state under international law. This provides the UK with an opportunity to review current fisheries management practices and replace them where appropriate, bearing in mind the obligation to manage fish sustainably, and taking account of the needs of coastal communities and the industry. The Committee concluded the UK will be able to control the access that foreign vessels have to fishing in UK waters and to renegotiate the UK's share of Total Allowable Catches (TACs) for fish stocks that are shared with other countries, including the EU. But the Committee cautioned that commercial fish stocks that are shared with other states risk over-exploitation on either side of political borders and concluded that the Government must pursue new, co-operative relations with the EU and other European neighbours to manage these shared fish. The Committee also concluded that the Government may come under pressure to balance new quota shares and access arrangements against access to the Single Market."*

## **International Trade Questions**

[Answering questions](#) on International Trade on 15 December, the Secretary of State for International Trade, Liam Fox updated the House of Commons on discussions he has had with the World Trade Organisation on the approval of new schedules for the UK after the UK has left the EU:

*"I have had a number of constructive discussions with the director-general of the World Trade Organisation, Roberto Azevêdo. We have made clear to the WTO membership the UK's intention to replicate as far as possible our current obligations in order to avoid disrupting our trading relationships or those of our trading partners across the world. The UK will need its own schedules in the WTO regardless of the nature of our future trading relationship with the EU."*

When asked about contingencies in the event schedules cannot be agreed, the Secretary of State said:

*“The contingency that the hon. Gentleman asks for is in place, because until new schedules are negotiated and agreed, current schedules will apply. It is worth noting that the European Union itself, having failed to negotiate EU-28 schedules, is still operating successfully under EU-15 of 1995.”*

### **Committee on Exiting the European Union visits Aberdeen**

On 19 December, the Committee on Exiting the European Union held its [meeting in Aberdeen](#). The meeting formed part of the Committee's inquiry into the UK's negotiating objectives for withdrawal from the EU. The Committee took evidence on the opportunities and risks for Scotland as a result of Brexit and also the effect of Brexit on the Aberdeen economy, with a particular focus on the fishing and renewables sectors.

The Committee took evidence from Professor Michael Keating, Chair in Scottish politics, University of Aberdeen; Deirdre Michie, Chief Executive, Oil and Gas UK; Suzanne Burr, Thorpe Molloy recruitment – specialist in freedom of movement issues and Andrew Walker, Managing Partner, Johnston Carmichael and then from Andrew Scott from Scotrenewables, Bertie Armstrong, Chief Executive, Scottish Fisherman's Federation and Michael Bates of the Scottish Seafood Association.

The evidence session can be viewed on [Parliament TV](#).

### **The Joint Committee on Human Rights Brexit Report**

On 19 December the Joint Committee on Human Rights [published a report](#) which concluded that the UK Government must not use fundamental rights as a bargaining chip in its Brexit negotiations. The Committee also called on the Government to give an undertaking to protect the residency rights of EU nationals in the UK.

According to the Committee's [news release](#):

*“While many fundamental rights are underpinned by EU law, the Committee says that it is not clear whether the Government intends to remove any rights which UK citizens currently possess under EU law - and, if so, which rights are under threat. It demands that any future legislation should include safeguards and Parliament should have the opportunity to debate, amend and vote on any proposed changes to fundamental rights.”*

On the issue of residency rights for EU nationals, the Committee's Chair Harriet Harman said:

*“The Government must not use human rights as a bargaining chip. Moreover, the Government will continue to have obligations under Article 8 of the European Convention on Human Rights, as we set out in our Report. The UK Government could not deport the large numbers of EU nationals currently in the UK.”*

In relation to future trade agreements, the Joint Committee news release stated:

*“The EU has included human rights clauses in trade agreements for many years. The Committee recommends that when the UK exits the EU, and enters into trade agreements with other states, the Government should, at the very least, ensure that standards included in current agreements are maintained.”*

## Reflections on the European Council

---

In a [blog piece](#), Dr Simon Usherwood – a Senior Fellow of the UK in a Changing Europe examined what last week’s European Council means for Brexit and the UK’s relationship with the EU. On the meeting itself Dr Usherwood wrote:

*“The question of the UK’s departure was not a big part of proceedings. Theresa May got a short slot to set out an update on the UK, which she used mainly to underline the need to provide prompt agreement on the status of UK nationals living in the rest of the EU, and EU nationals living in the UK.*

*After her departure at the end of the European Council, the remaining 27 leaders had a brief informal meeting, to agree a short statement setting out the process for negotiating Article 50.”*

On the question of UK political participation in European Council meetings following the Brexit vote Dr Usherwood wrote:

*“One of the key logics of European integration is that member states are able to tackle issues together that they would struggle with by themselves. Everyone brings something to the table and – through a process of negotiation, compromise and deals – everyone gets something back.*

*When countries don’t play ball with this process, it’s usually for a very specific reason: domestic political pressure is the most common source. Other states understand that and work to try and accommodate it where they can, although not to the detriment of the overall system. For the state with the problem, the game is to work out how the specific issue weighs up against the other benefits that it derives from membership.*

*The UK is in a very different place. By announcing its intention to leave, it collapses the process: by offering nothing, it should now expect nothing in return. This manifested itself very clearly in three ways at the European Council.”*

Dr Usherwood explained the three manifestations as:

- The EU will spend as little time as possible on the matter of Brexit.
- What focus the EU does have on Brexit at present is limited to process.
- The EU continues to operate as before. Those informal greetings and chats are part and parcel of the process and if May didn’t get a look in, then it is because she is no longer part of that process.

## The German Federal election and Brexit

---

Dr Isabelle Hertner, a Lecturer in Politics of Britain in Europe at King's College London has published a blog for the UK in a Changing Europe examining the [implications of the German Federal election for Brexit](#).

Dr Hertner suggests that the September election is unlikely to change the German Government's position markedly on Brexit as both the largest parties have said that full membership of the European Single Market comes with the requirement for the free movement of people.

The blog examines the likely domestic policies that Chancellor Merkel is likely to present to the German electorate as she seeks a fourth term in office before briefly outlining the Brexit related approaches of Merkel's CDU and the opposition SPD:

*"The picture that was painted by Merkel and her colleagues at the party conference was one of an uncertain world. The CDU executive's (approved) motion was called 'Orientation in difficult times: for a successful Germany and Europe'. In it, the outcome of the Brexit referendum is described as a cause for concern. However, the CDU does not reveal its preferences for a Brexit deal here. After all, Merkel does not want to be seen to steal the limelight of the EU institutions and their appointed Brexit negotiators. So far, however, Merkel has given us no reason to believe that the German government would allow the UK to remain a member of the Single European Market whilst abolishing the free movement of people. The CDU remains supportive of the EU and its founding principles.*

*Meanwhile, the centre-left SPD, Germany's second largest party, has not yet selected its chancellor candidate for the election. In recent opinion polls, the SPD would only gain about 20 per cent of the votes. What the party leadership finds hard to accept is that many SPD supporters like Angela Merkel. It still remains unclear whether party leader Sigmar Gabriel will run for the chancellorship in 2016. Rumour has it that the incumbent president of the European Parliament, Martin Schulz, is considering running for the job. As his term ends in January 2017, he might be looking for a new career. Both Gabriel and Schulz belong to the SPD's centrist, pragmatic wing. Both politicians have expressed their unhappiness with the Brexit referendum outcome. Yet, as a convinced Europhile and supranationalist, Schulz would be the harder negotiation partner for Theresa May. He has stated that 'The party of Churchill and Disraeli has put its particular interests before those of the country: Cameron, Johnson and Gave have left ruins in order to satisfy their personal ambitions'. Neither Martin Schulz nor Sigmar Gabriel would be likely to allow the UK to remain in the single market whilst abolishing the free movement of people.*

*In short, whether Merkel becomes Chancellor for the fourth time or the SPD unexpectedly wins the voters over, the German government's stance on the EU's principle of free movement is unlikely to change in 2017. On a personal level, Theresa May would probably get along better with Angela Merkel than with any of the SPD's likely candidates, as her recent visit to Berlin has indicated. Nonetheless, at least for now, Germany's mainstream parties are unlikely to offer the UK favourable Brexit conditions."*

## **Scottish Universities Legal Network on Europe (SULNE) papers on implications on Brexit for environmental law in Scotland**

---

Following the decision to leave the European Union, the Scottish Universities Legal Network on Europe (SULNE) was created. This is an initiative jointly led by the University of Edinburgh School of Law and Europa Institute, the University of Glasgow School of Law and the University of Strathclyde Law School in partnership with all the Scottish Universities.

According to [SULNE](#), it:

*“will provide legal expertise and advice on Scotland and the UK’s future position following ‘Vote Leave’, for instance by inputting into the work of the Scottish Governments’ Standing Council on Europe, publishing expert and focussed position papers and briefings and making these freely available and producing ‘citizen focussed information’. The group will also discuss curriculum reform within the law curriculum made necessary by the decision to leave the EU.”*

SULNE has published a [paper](#) on the implications on Brexit for environmental law in Scotland

As reported in the weekly update on [21 November](#), the network previously produced a number of [position papers](#) for the Scottish Government’s Standing Council on Europe roundtable which was held on 24 October.

**Iain McIver**  
**SPICe Research**

**SPICe** The Information Centre  
An t-Ionad Fiosrachaidh

## Scottish Parliament Information Centre (SPICe)

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Iain McIver on extension 85294 or email [iain.mciver@parliament.scot](mailto:iain.mciver@parliament.scot). Members of the public or external organisations may comment on this briefing by emailing us at [SPICe@parliament.scot](mailto:SPICe@parliament.scot). However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament's Public Information Service at [sp.info@parliament.scot](mailto:sp.info@parliament.scot).

Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH 99 1SP.

[www.parliament.scot](http://www.parliament.scot)

This paper was written by Iain McIver, SPICe Research.

## Culture, Tourism, Europe and External Relations Committee

Keep up to date with the Committee via the following links:



[www.parliament.scot/europe](http://www.parliament.scot/europe)



[europe@parliament.scot](mailto:europe@parliament.scot)



[@SP\\_European](https://twitter.com/SP_European)



[YouTube](https://www.youtube.com)

**#SPICeBrexitWeekly**